IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 564 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHANIBEN MUNJABHAI PARMAR

Versus

DRIBER DHANJIBHAI DEVAJIBHAI

Appearance:

1. First Appeal No. 564 of 2002

MR AMAR D MITHANI for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1,3

MR PREMAL R JOSHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 05/05/2004

ORAL JUDGEMENT

1. The appellant (original claimant), by filing this

appeal under Section 173 of the Motor Vehicles Act, 1988 ('Act' for short), has challenged the judgment and order dated October 29, 2001, passed by the Motor Accident Claims Tribunal (Main), Junagadh, rejecting application Exh.41 filed by the claimant under Section 140 of the Act in MACP No.879 of 1996 claiming compensation of Rs.25,000/- on the principle of 'no fault liability'. The said application Exh.41 was rejected by the Tribunal on the ground that the claimant had neither produced chargesheet or form No.54, nor the documents which were produced did show the number of the vehicle involved in the accident.

2. Heard learned advocate, Mr. Amar D. Mithani, for the appellant and learned advocate, Mr. Premal Joshi, for respondent No.2-Junagadh Nagar Palika, owner of the Bus involved in the accident. Respondent No.1, the driver of the Bus, and respondent No.3, New India Assurance Company Limited, have been served with notice of the First Appeal, but they have chosen not to appear before the Court at the time of hearing of the present First Appeal.

3. Learned advocate for the appellant has produced documentary evidence which was placed on the record of the Tribunal along with List Exh.52. The said documents, prima facie, have indicated that the appellant had sustained injuries in the vehicular accident while she was alighting from the Bus near Azad Chowk Junagadh. It is true that the number of the Bus was not mentioned in the said documents. But, in the First Information Report, the appellant had specifically stated that she was travelling in the City Bus belonging to the respondent No.2-Nagarpalika of Route No.6 which was proceeding from Bharat Mill to Azad Chowk. She had also categorically stated that while alighting from the City Bus, she had fallen down and had sustained injuries on the right hand and on the head. She had also disclosed that the Bus Conductor had accompanied her in an auto-rickshaw to the Civil Hospital, Junagadh. The injury certificate had also, prima-facie, proved that the appellant-claimant had sustained injury as a result of fall from the Bus. The disability certificate Exh.43/1, issued by Dr. Prashant B. Chhaya, M.S. (Ortho.), had also proved that the injuries sustained by the appellant in the vehicular accident had resulted into 21.8% permanent partial physical impairment of right upper limb. In my opinion, the above documents had proved that the appellant had sustained injuries in the vehicular accident as a result of rash and negligent driving by the driver of the City Bus belonging to the respondent

No.2-Nagar Palika. Admittedly, the said Bus was insured with the respondent No.3- New India Assurance Company Limited, which fact has not been denied before the Tribunal. In view of the above facts emerging from the record of the case, in my view, the ingredients of Section 140 of the Act are satisfied, and the Tribunal has committed an error in rejecting the application Exh.41 filed by the appellant under Section 140 of the Act. The appeal shall, therefore, have to be allowed and, accordingly, it is allowed. The respondents are directed to deposit with the Tribunal the amount of Rs.25,000/- under 'no fault liability' along with interest at the rate of 9% from the date of the application till the date of deposit and costs of the application within eight weeks from today. The original claimant shall, however, file an undertaking before the Tribunal within four weeks from today to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimants shall obtain a decision on merits in the said claim petition.

4. On the said undertaking being filed, 40% of the amount awarded shall be permitted to be withdrawn by the claimant without security. The remaining 60% of the amount shall be invested in a Cumulative Fixed Deposit in any nationalized Bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

5. Subject to the observations and directions hereinabove, the appeal is allowed. There shall be no order as to costs. D.S. permitted.

(M.H. Kadri, J.)

(swamy)